

AMENDED FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

The numbering format of Section 86001 et seq. is being revised to be consistent with Title 22 regulations.

New Section 85001(a)(2)

Specific Purpose:

This section is necessary to adopt the definition of the term “Advance Health Care Directive” and maintain consistency with the Residential Care Facilities for the Elderly (RCFE) hospice regulations.

Factual Basis:

Assembly Bill (AB) 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Defining the term “Advance Health Care Directive” provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications:

Section 85001(a)(2) is being amended in response to public comments received to delete the word "durable" for conformity with statutory term usage.

New Section 85001(a)(3)

Specific Purpose:

This section is necessary to adopt the definition of the term “Allowable Health Condition” and maintain consistency with the RCFE hospice regulations.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Defining the term “Allowable Health Condition” provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85001(a)(4)

Specific Purpose:

This section is necessary to adopt the definition of the term “Appropriately Skilled Professional” and maintain consistency with the RCFE hospice regulations.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Defining the term “Appropriately Skilled Professional” provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications:

Section 85001(a)(4) is being amended in response to public comments received. For clarity, 1) the word "individual" is being deleted, 2) the words "term" and "adult residential" are being added, and 3) the phrase "currently licensed in California" is being deleted.

New Section 85001(d)(1)

Specific Purpose:

This section is necessary to adopt the definition of the term “Do-Not-Resuscitate Form” and maintain consistency with the RCFE hospice regulations.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Defining the term “Do-Not-Resuscitate Form” provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85001(f)(1)

Specific Purpose:

This section is necessary to adopt the definition of the term “Facility Hospice Care Waiver” and maintain consistency with the RCFE hospice regulations.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Defining the term "Facility Hospice Care Waiver" provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications:

Section 85001(f)(1) is being amended in response to public comments received. For greater clarity, the definition of "Facility Hospice Care Waiver" has been modified to include the phrase "(than) ordinarily would be permitted in an Adult Residential Facility".

New Section 85001(h)(1)Specific Purpose:

This section is necessary to adopt the definition of the term "Health Care Provider" and maintain consistency with the RCFE hospice regulations.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Defining the term "Health Care Provider" provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85001(h)(2)Specific Purpose:

This section is necessary to adopt the definition of the term "Health Care Surrogate Decision Maker" and maintain consistency with the RCFE hospice regulations.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Defining the term "Health Care Surrogate Decision Maker" provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85001(h)(3)

Specific Purpose:

This section is necessary to adopt the definition of the term “Hospice or Hospice Agency” and maintain consistency with the RCFE hospice regulations.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Defining the term “Hospice or Hospice Agency” provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications:

Section 85001(h)(3) is being amended in response to public comments received. The sentence

"The hospice agency providing services in an Adult Residential Facility shall not subcontract with the licensee or any facility staff for the provision of services."

is added to clarify that the licensee cannot subcontract with the hospice agency.

New Section 85001(h)(4)

Specific Purpose:

This section is necessary to adopt the definition of the term “Hospice Care Plan” and maintain consistency with the RCFE hospice regulations.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Defining the term “Hospice Care Plan” provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85001(t)(1)

Specific Purpose:

This section is necessary to adopt the definition of the term “Terminally Ill Client” and maintain consistency with the RCFE hospice regulations.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Defining the term "Terminally Ill Client" provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85075.1 - TitleSpecific Purpose:

This action is necessary to adopt the phrase "HOSPICE CARE" as the title for Section 85075.1.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Adopting this phrase as the title provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Sections 85075.1(a) and (a)(1) through (a)(7)Specific Purpose:

These sections clarify that a licensee must meet all seven conditions specified in Sections 85075.1(a)(1) through (7) to be permitted to retain terminally ill clients who receive hospice services in the facility.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying that a licensee must meet certain conditions to retain clients who receive hospice services, provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications - Section 85075.1(a):

Section 85075.1(a) is being amended in response to public comments received. For clarity, the phrase "from a hospice agency" is added to this sentence and the phrase "in the facility" is deleted. The text is also being amended from reading "....conditions (1) through (6)" to now read "....conditions (1) through (7)". This

numerical change from (6) to (7) is being made in accordance with the adoption of new Section 85075.1(a)(7).

Final Modifications - Section 85075.1(a)(1):

Section 85075.1(a)(1) is being amended in response to public comments received. For clarity, the phrase "facility hospice care" is added to this sentence.

Final Modifications - Section 85075.1(a)(2):

Section 85075.1(a)(2) is being amended 1) for grammatical clarity, and 2) to clarify that the requirements of this section are in Chapters 1 and 6, Division 6, of Title 22 of the California Code of Regulations.

Post Hearing Modification - New Section 85075.1(a)(7)

Specific Purpose:

Section 85075.1(a)(7) is being adopted to implement the provisions of Health and Safety Code Section 1507.3(a)(4).

Factual Basis:

Health and Safety Code Section 1507.3(a)(4) specifies that the hospice agrees to provide necessary medical intervention related to the client's terminal illness.

Post Hearing Modification - New Section 85075.1(a)(7)(A)

Specific Purpose:

Section 85075.1(a)(7)(A) is being adopted to clarify that the medical intervention(s) shall not exceed the care and supervision permitted in a residential facility.

Factual Basis:

Medical intervention(s) shall not exceed the care and supervision permitted for a residential facility as defined in Chapters 1 and 6, Division 6, of Title 22, CCR, governing Adult Residential Facilities.

New Sections 85075.1(b) and (b)(1) through (b)(7)

Specific Purpose:

These sections require that a hospice care plan shall be maintained in the facility for each hospice client. To be current and complete, the plan must include all of the information identified in Sections 85075.1(b)(1) through (7).

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying that each client's plan include all of the information identified provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications - Section 85075.1(b)(4):

Section 85075.1(b)(4) is being amended in response to public comments received. For clarity, the words "the client's" are added to this sentence.

Final Modifications - Section 85075.1(b)(4)(B):

Section 85075.1(b)(4)(B) is being amended to provide the statutory definition of controlled drugs Schedule II-V. For clarity, the words "as defined in Health and Safety Code Sections 11055-11058" are added to this sentence.

Final Modifications - Section 85075.1(b)(7):

Section 85075.1(b)(7) is being amended to add the phrase, "on an individual basis" to clarify that requests for additional information are application specific.

New Section 85075.1(c)Specific Purpose:

This section clarifies that it is the responsibility of the licensee to ensure that the plan is in compliance with the requirements of Section 85075.1 and other Adult Residential Facility (ARF) regulations in Chapters 1 and 6 of Title 22, California Code of Regulations (CCR).

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying that it is the licensee's responsibility to ensure that the plan complies with this section and other ARF regulations provides clarification for licensees, aids in the implementation of the Mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications - Section 85075.1(c):

Section 85075.1(c) is being amended to add the words, "those provisions" and "Division 6" to clarify the reference citation.

New Section 85075.1(d)Specific Purpose:

This section clarifies that it is the responsibility of the licensee to ensure that the Plan is current, accurately matches the services being provided, and that the client's care needs are being met at all times.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying the licensee's responsibility provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85075.1(e)Specific Purpose:

This section specifies that the Department may require the licensee to revise the plan if the plan is not fully implemented, or as written, the plan does not protect the health and safety of any facility client.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifically stating that the Department may require that the licensee revise the plan due to certain deficiencies provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85075.1(f)Specific Purpose:

This section specifies that the licensee shall maintain a record of all hospice-related training provided to the licensee or facility staff for a period of three years.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying the number of years to maintain a record of all hospice-related training provided to the

licensee or facility staff provides clarification and maintains consistency with the existing RCFE hospice regulations.

New Section 85075.1(f)(1)

Specific Purpose:

This section specifies that the hospice-related training record shall specify the names and credentials of the trainer, the persons in attendance, the subject matter, and date and duration of the training.

Factual Basis:

Specifying the information required in the hospice-related training record provides clarification for licensees and maintains consistency with the existing RCFE hospice regulations.

New Section 85075.1(f)(2)

Specific Purpose:

This section specifies that the Department shall be entitled to inspect, audit, remove if necessary, and copy the hospice-related training record upon demand during normal business hours.

Factual Basis:

Specifying the inspection authority of the Department provides clarification and maintains consistency with the existing RCFE hospice regulations.

New Section 85075.1(g)

Specific Purpose:

This section specifies that the licensee shall, in addition to complying with the reporting requirements specified in Sections 80061 and 85061, submit a report to the Department when a terminally ill client's hospice services are interrupted or discontinued for reasons other than the death of the client. The licensee shall also report any deviation from the client's plan, or other incident, which threatens the health and safety of any client.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying that the licensee comply with the reporting requirements specified in Sections 80061 and

85061 and other reports that must be made to the Department due to certain circumstances provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications - New Section 85075.1(g):

The first sentence of this section is being amended from ".....specified in Sections 80061-85061,..." to now read ".....specified in Sections 80061 and 85061".

New Sections 85075.1(g)(1) and (g)(1)(A) through (g)(1)(D)

Specific Purpose:

These sections clarify that the report the licensee is required to submit per Section 85075.1(g) shall be made by telephone within one working day, and in writing within five working days. The report and shall specify all of the following information:

- The name, age, and gender of each affected client;
- The date and nature of the event and explanatory background information leading up to the event;
- The name and business telephone number of the Hospice; and any actions taken by the licensee and any other parties to resolve the incident and to prevent similar occurrences

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying that the required report include all listed information aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Sections 85075.1(h) and (h)(1) through (h)(5)(A)

Specific Purpose:

These sections require that the licensee shall maintain specific information in the client's record for each client receiving hospice services.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying that the licensee maintain certain information for each client provides clarification for

licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85075.1(i)

Specific Purpose:

This section requires that any prescription medications no longer needed by the client be disposed of in accordance with Section 80075(o).

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying how licensees dispose of any prescription medications provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Sections 85075.1(j) and (j)(1)

Specific Purpose:

These sections require that care for the client's health condition be addressed in the plan and, when caring for the client, no facility staff, other than an appropriately skilled health professional, shall perform any health care procedure that, under law, may be performed only by an appropriately skilled professional.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying who is allowed to care for a client's health condition provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85075.1(k)

Specific Purpose:

This section requires that the licensee centrally store the medications that are for each client receiving hospice services in the facility and maintain a record of those dosages.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. To centrally store medications and maintain a record of dosages provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85075.1(l)Specific Purpose:

This section clarifies that bedridden hospice clients may reside in the facility provided that within 48 hours the licensee ensures that the local fire authority is notified of the estimated length of time the client will be bedridden.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. By clarifying when the fire department must be notified of the estimated length of time the client will be bedridden, this section aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications:

Section 85075.1(l) is being amended in response to public comments received. The statutory definition of bedridden [Health and Safety Code Section 1569.72(b)], as it applies to hospice clients in Adult Residential Facilities, is added as Handbook.

Regulations are in process at the Office of the State Fire Marshal to address fire safety standards for facilities. Once these regulations have been finalized the Department will develop bedridden regulations.

New Section 85075.1(m)Specific Purpose:

This section provides that the Department may require the relocation of a client whose needs for personal care and supervision or health care are not being met in the facility.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. By clarifying the circumstances when the Department may require the relocation of a client this section aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications:

For clarity, Section 85075.1(m) is being amended to delete the phrase "or in Chapter 6, CCR."

New Section 85075.2 - TitleSpecific Purpose:

This action is necessary to adopt the phrase "FACILITY HOSPICE CARE WAIVER" as the title for Section 85075.2.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Adopting this phrase as the title for this section provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Sections 85075.2(a) and (a)(1) through (a)(4)Specific Purpose:

These sections require licensees to submit a written request to the Department for a Facility Hospice Care Waiver to retain terminally ill clients and permit them to receive care from hospice. The written request shall include the four specific areas identified in Sections 85075.2(a)(1) through (a)(4).

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying that licensees are required to submit a written request, that includes certain specific information, provides clarification for the retention of terminally ill clients, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications - Section 85075.2(a)(1):

Section 85075.2(a)(1) is being amended in response to public comments received. For clarity, the words "terminally ill" are added to this sentence.

Final Modifications - Section 85075.2(a)(2):

Section 85075.2(a)(2) is being amended in response to public comments received. For clarity, two phrases "that the licensee" and "ensure compliance" are added to this sentence and the word "comply" is deleted.

Section 85075.2(a)(2) is also being amended to add the words "Division 6 of Title 22" to clarify the reference citation.

New Section 85075.2(b)

Specific Purpose:

This section requires the Department to deny a waiver request if the licensee is not in substantial compliance with the licensing regulations governing ARFs.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying that the Department is required to deny a waiver request if the licensee is not in substantial compliance with the licensing regulations governing ARFs provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications - Section 85075.2(b):

Section 85075.2(b) is being amended to add the words "Division 6 of Title 22" to clarify the reference citation.

New Section 85075.2(c)

Specific Purpose:

This section specifies that the Department shall not approve a waiver request unless the licensee demonstrates the ability to meet the care and supervision needs of terminally ill clients and states a willingness to provide additional care staff if required by the plan.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Stating conditions when the Department will not approve a waiver request provides clarification, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Sections 85075.2(d), (d)(1), (d)(1)(A), and (d)(2)Specific Purpose

These sections clarify that a waiver shall include terms and conditions identified in Sections 85075.2(d)(1), (d)(1)(A), and (d)(2).

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. The terms and conditions of the waiver provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Sections 85075.2(e), (e)(1), (e)(2), and (e)(2)(A)Specific Purpose:

These sections require that the Department notify the applicant or the licensee, in writing, within 30 days of receipt of the waiver request that the request has been received and 1) accepted for consideration or, if the request is deficient, 2) describe what additional information is required for the request to be acceptable, and a timeframe for submitting this needed information to the Department.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. By stating a timeframe for Department response to a waiver request. This section provides clarification, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations. This section also is necessary to comply with the Permit Reform Act - Section 15376 of the Government Code.

Post Hearing Modifications - New Section 85075.2(e)(3)

Specific Purpose:

Section 85075.2(e)(3) is being adopted to ensure consistency with the provisions of Residential Care for the Elderly Regulations, Title 22, Division 6, Article 8, Section 87716.1(e).

Factual Basis:

Residential Care Facilities for the Elderly Regulations, Title 22, Division 6, Article 8, Section 87716.1(e), requires that, within 30 days of receipt of an acceptable request for a hospice care waiver, the Department shall notify the applicant or licensee in writing whether the request has been approved or denied.

New Section 85075.3 - Title

Specific Purpose:

This action is necessary to adopt the phrase "ADVANCE HEALTH CARE DIRECTIVES" as the title for Section 85075.3.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Adopting this phrase as the title provides clarification, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

New Section 85075.3(a)

Specific Purpose:

This section specifies that a client shall be permitted to have an Advance Health Care Directive in their facility file.

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying that a client shall be permitted to have an Advance Health Care Directive in their facility file provides clarification for licensees, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Section 85075.3(a) is also consistent with Section 4705, Probate Code.

New Sections 85075.3(b), (b)(1) and (b)(2)

Specific Purpose:

These sections specify that if a client experiences a medical emergency and has an Advance Health Care Directive on file, the facility staff shall respond in one of the two ways documented in Sections (b)(1) and (b)(2).

Factual Basis:

AB 1108 (Chapter 410, Statutes of 1999) requires facility standards and client safeguards from licensees when caring for terminally ill clients. Specifying how the facility staff shall respond if a client experiences a medical emergency and has an Advance Health Care Directive on file provides clarification, aids in the implementation of the mandated facility standards/client safeguards, and maintains consistency with the existing RCFE hospice regulations.

Final Modifications:

Section 85075.3(b)(1) is being amended in response to public comments received. For clarity the word "or" is added to underscore the option to the reader.

Section 85075.4

Specific Purpose:

To renumber Section 85075.3 as Section 85075.4.

Factual Basis:

This amendment is necessary for numerical continuity and consistency.

b) Identification of Documents Upon Which Department Is Relying

AB 1108 (Chapter 410, Statutes of 1999)

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated costs in these regulations that require state reimbursement under Section 17500 et seq. of the Government Code.

d) Statement of Alternatives Considered

The Department has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of significant Adverse Economic Impact on Business

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #2 at a public hearing held on January 15, 2003. The public hearing was preceded by a 45-day public comment period from November 29, 2002 through January 13, 2003. No verbal testimony was presented at the public hearing. Written comments were received from the following individual:

Eric M. Carlson (EMCNSCLC)
National Senior Citizens Law Center

The summarized public comments and the Department's response follow:

Section 85001(a)(2)1) Comment (EMCNSCLC)

"The word "Durable" should be deleted. The California Health Care Decisions Law has been revised to refer simply to a "Power of Attorney for Health Care." See Cal. Prob. Code § 4629."

Response

The Department thanks Mr. Carlson for his comments and agrees with this recommendation. The regulation will be changed accordingly.

Section 85001(a)(4)2) Comment (EMCNSCLC)

"For clarity, we recommend the following revision: "This ~~individual~~ term includes, but is not limited to, the following: Registered Nurse

Also, the phrase “facilities currently licensed in California” is so vague that it is not helpful. Is there an intent here to limit this phrase to adult residential facilities? If not, “currently licensed in California” seems much too broad, because there are numerous types of licensed facilities in the state."

Response

The Department thanks Mr. Carlson for his comments and agrees with this recommendation. The regulation will be changed accordingly.

Section 85001(d)(1)

3) Comment (EMCNSCLC)

“Do-Not-Resuscitate-Form” should be replaced by “Request to Forgo Resuscitative Measures.” See Cal. Prob. Code § 4780. A DNR form is a type of a Request to Forgo Resuscitative Measures."

Response

The Department thanks Mr. Carlson for his comments. The term "Do-Not-Resuscitate-Form" and "Request to Forgo Resuscitative Measures" are both utilized in statute; as such, either term is acceptable. The Department will retain the use of the term "Do-Not-Resuscitate-Form" as it is consistent with the term used in the Residential Care Facilities for the Elderly regulations.

Section 85001(f)(1)

4) Comment (EMCNSCLC)

"The issue is not that clients require more care and supervision “than other clients”; the issue is that they require a level of care and supervision that ordinarily would not be allowed in an Adult Residential Facility. We recommend the following revision:

"(1) "Facility Hospice Care Waiver” means a waiver from the limitation on retention of clients who require more care and supervision ~~than other clients~~ than ordinarily would be allowed under these regulations in an Adult Residential Facility, and clients who are bedridden other than for a temporary illness...."

Response

The Department thanks Mr. Carlson for his comments. For greater clarification the definition of "Facility Hospice Care Waiver" has been modified to include the phrase, "(than) ordinarily would be permitted in an Adult Residential Facility".

Section 85001(h)(3)5) Comment (EMCNSCLC)

"Section 87101 (the definitional section for RCFEs) includes the following sentence: "The hospice agency providing services in an RCFE shall not subcontract with the licensee or any facility staff for the provision of services." This seems like a very important provision to retain in the Adult Residential Facility regulations. The client is able to remain in the ARF only because a hospice agency will be providing the necessary care. This safeguard would disappear if the hospice agency simply were allowed to subcontract its obligations to the ARF. We accordingly recommend the addition of the following sentence: "The hospice agency providing services in an ARF shall not subcontract with the licensee or any facility staff for the provision of services."

Response

The Department thanks Mr. Carlson for his comments and agrees with this recommendation. The regulation will be changed accordingly.

Sections 85075.1(a) & (a)(1)6) Comment (EMCNSCLC)

"For clarity, we recommend adding in language that is located in the RCFE/hospice regulation, and is consistent with the definitions at section 85001, as specified below:

- (a) A licensee shall be permitted to retain terminally ill clients who receive hospice services from a hospice agency in the facility if all of the following conditions (1) through (6) are met:

- (1) The licensee has received a facility hospice care waiver from the Department."

Response

The Department thanks Mr. Carlson for his comments. These sections have been modified to provide greater clarity.

Section 85075.1(b)(4)7) Comment (EMCNSCLC)

"For clarity, we recommend adding the word "client's" before "responsible person."

Response

The Department thanks Mr. Carlson for his comments and agrees with this recommendation. The regulation will be changed accordingly.

Section 85075.1(l)8) Comment (EMCNSCLC)

"There is evidently no definition of "bedridden" at current section 85001(b).

There should be fire standards set for the building, comparable or identical to the fire standards required at sections 1566.45, 1568.0832, and 1569.72. Recent events have shown that inadequate fire protections can be fatal when bedridden residents are involved. Notifying the local fire authority will do little to protect a bedridden resident, if there are not meaningful fire standards set for the building."

Response

The Department thanks Mr. Carlson for his comments. Section 85075.1(1) will be amended to add the statutory definition of bedridden (Health and Safety Code Section 1569.72) as it applies to hospice clients Adult Residential Care Facilities.

Regulations are in process at the Office of the State Fire Marshal to address fire safety standards for facilities. Once these regulations have been finalized the Department will develop bedridden regulations.

Section 85075.2(a)(1)9) Comment (EMCNSCLC)

The phrase "terminally ill" should be inserted before "clients." This is consistent with the comparable RCFE language at section 87116.1

Response

The Department thanks Mr. Carlson for his comments and agrees with this recommendation. The regulation will be changed accordingly.

Section 85075.2(a)(2)10) Comment (EMCNSCLC)

"This subsection is confusing. We suggest the following revision:

"(2) A statement by the licensee or designated representative that this section, and all other requirements within Chapters 1 and 6, CCR, governing Adult Residential Facilities have been read, and that the facility ~~and~~ will comply with these requirements."

Response

The Department thanks Mr. Carlson for his comments. This section has been amended to provide greater clarity.

Section 85075.3

11) Comment (EMCNSCLC)

"This section is confusing. The current wording suggests that the staff has the option of following either (b)(1) or (b)(2). Staff needs clearer direction. We suggest the following revision:

- (b) If a client experiences a medical emergency and has an Advance Health Care Directive on file, the facility staff shall do one of the following:

(1) If a physician, RN or LVN is in the client's presence at the time of the emergency, and has assumed responsibility for the client's care, the staff immediately shall provide the Advance Health Care Directive to the physician, RN or LVN, and then shall remain available for possible requests from that person.

(1) Otherwise, immediately ~~Immediately~~ telephone 9-1-1, present the Advance Health Care Directive to the responding emergency medical personnel and identify the client as the person to whom the Directive refers.

(2) ~~Immediately give the Advance Health Care Directive to a physician, RN or LVN if he or she is in the client's presence at the time of the emergency and if he or she assumes responsibility."~~

Response

The Department thanks Mr. Carlson for his comments. This section has been amended with the insertion of the word "or" to provide greater clarification.

g) 15-Day Renotice

A 15-day renotice was held from May 2, 2003 to May 19, 2003. There was neither testimony received nor further changes made to the regulations.

h) Second 15-Day Renotice

Due to the fact that regulatory changes were required to comply with the Office of Administrative Law Decision of Disapproval of Regulatory Action, dated August 20, 2003, a second 15-day renotice was held from September 11, 2003 to September 26, 2003. There was neither testimony received nor further changes made to the regulations.